

Message Text

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TO ALL DIPLOMATIC AND CONSULAR POSTS

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INFORM CONSULS

E.O. 11652: N/A

TAGS: CGEN, CVIS, CASC, CPAS

SUBJECT: CLEMENCY PROGRAM FOR VIETNAM ERA DRAFT EVADERS
AND MILITARY DESERTERS.

REF: A-7591 OF OCTOBER 31, 1974

1. THE REFERENCED AIRGRAM TRANSMITTED A COPY OF THE PRESIDENT'S PROCLAMATION NO. 4313 AND THE PRESIDENT'S EXECUTIVE ORDER OF SEPTEMBER 16, 1974. IN BOTH THE PROCLAMATION AND ORDER THE CUTOFF DATE OF JANUARY 31, 1975 WAS ESTABLISHED. THE DEPARTMENT HAS RECEIVED QUERIES FROM POSTS CONCERNING THE APPLICABILITY OF THIS DATE FOR PERSONS WHO, FOR REASONS BEYOND THEIR CONTROL, CANNOT RETURN TO MILITARY CONTROL OR PRESENT THEMSELVES TO A US ATTORNEY BEFORE THE CUTOFF DATE. THE DEPARTMENT HAS OBTAINED THE FOLLOWING INFORMATION WHICH GRANTS SOME LEEWAY IN THE APPLICATION OF THE CUTOFF DATE.

FOR MILITARY DESERTERS: THE FOLLOWING IS QUOTED FROM A MEMORANDUM FOR ASSISTANT SECRETARIES OF THE MILITARY DEPARTMENTS:

"THE REQUIREMENTS THAT THE ABSENTEE RETURN TO MILITARY
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CONTROL IS FUNDAMENTAL TO THE IMPLEMENTATION OF THE

CLEMENCY PROGRAM AND MAY NOT BE WAIVED. HOWEVER, SITUATIONS MAY ARISE IN WHICH AN INDIVIDUAL IS UNABLE TO RETURN PRIOR TO JANUARY 31, 1975, DUE TO CIRCUMSTANCES BEYOND HIS

CONTROL. CONSEQUENTLY, IN SUCH SPECIAL SITUATIONS THE SECRETARY CONCERNED MAY, IN INDIVIDUAL CASES AND IN THE INTEREST OF JUSTICE AND EQUITY, ESTABLISH A REPORTING DATE SUBSEQUENT TO JANUARY 31, 1975. THE ABSENTEE MUST REQUEST THE DEFERRED REPORTING DATE AND EXECUTE AND SUBMIT THE OATH OF ALLEGIANCE AND EXECUTE AN AGREEMENT PLEDGING TO PERFORM ALTERNATE SERVICE BEFORE JANUARY 31, 1975, IN COMPLIANCE WITH THE PRESIDENTIAL PROCLAMATION."

FOR DRAFT EVADERS: THE FOLLOWING IS QUOTED FROM A MEMORANDUM RECEIVED FROM THE ASSOCIATE DEPUTY ATTORNEY GENERAL TO THE DEPARTMENT.

" IT WILL BE THE POLICY OF THE DEPARTMENT OF JUSTICE TO PERMIT AN UNCONVICTED DRAFT EVADER TO PARTICIPATE IN THE CLEMENCY PROGRAM ALTHOUGH HE WAS UNABLE TO APPEAR BEFORE A U.S. ATTORNEY BEFORE JANUARY 31, 1975, IF THE FOLLOWING THREE CONDITIONS ARE MET: (1) THE INDIVIDUAL MUST HAVE CONTACTED SOME AGENCY OF THE UNITED STATES GOVERNMENT IN WRITING BEFORE JANUARY 31, 1975, IN WHICH HE INDICATES HIS INTENT AND DESIRE TO PARTICIPATE IN THE CLEMENCY PROGRAM AND THE CIRCUMSTANCES THAT WILL PREVENT HIM FROM APPEARING BEFORE A U.S. ATTORNEY BEFORE JANUARY 31, 1975. IN EXTRAORDINARY CIRCUMSTANCES, THE REQUIREMENT THAT THE CONTACT BE MADE IN WRITING MAY BE WAIVED BY THE APPROPRIATE U.S. ATTORNEY; (2) THE INDIVIDUAL MUST SUSTAIN THE BURDEN OF PROVING TO THE APPROPRIATE U.S. ATTORNEY THAT HE WAS PREVENTED FROM PHYSICALLY APPEARING BEFORE THAT U.S. ATTORNEY BEFORE JANUARY 31, 1975, FOR REASONS BEYOND HIS CONTROL AND UNRELATED TO HIS DRAFT EVASION OFFENSE (SUCH AS ILLNESS OR INABILITY TO SECURE AN EXIT PERMIT OR VISA); AND (3) THE INDIVIDUAL MUST SUSTAIN THE BURDEN OF PROVING TO THE APPROPRIATE U.S. ATTORNEY THAT HE PHYSICALLY APPEARED BEFORE THAT U.S. ATTORNEY AS PROMPTLY AS WAS FEASIBLE IN LIGHT OF ALL THE CIRCUMSTANCES. "

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FOR CONVICTED DESERTERS AND CONVICTED EVADERS: IN A PRESS CONFERENCE HELD BY CHAIRMAN CHARLES E. GOODELL OF THE PRESIDENTIAL CLEMENCY BOARD THE CHAIRMAN STATED THAT "I DO NOT THINK WE SHOULD GIVE ANYBODY ANY FALSE HOPES ABOUT JANUARY 31ST TO BE EXTENDED. IF THEY ARE INTERESTED, THEY SHOULD APPLY NOW AND I AM NOT CERTAINLY GOING TO PREDICT ANYTHING THAT MIGHT LEAD SOMEBODY TO

DELAY WHEN HE SHOULD GET HIS APPLICATION IN. "

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(2) IT THEREFORE BEHOOVES ANY AMERICAN CITIZEN FALLING
UNDER THE PRESIDENT'S PROCLAMATION TO CONTACT THE APPRO-

PRIATE AUTHORITY PRIOR TO JANUARY 31, 1975 TO ESTABLISH
HIS INTENT UNDER THE CLEMENCY PROGRAM. KISSINGER

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